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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TIFFANY HATCHER, Individually and as
Guardian Ad Litem to N.H., a minor,

Plaintiffs,

vs.

WALMART INC.,

Defendant.

Case Number:

PLAINTIFFS' ORIGINAL COMPLAINT
AND JURY DEMAND

Plaintiff Tiffany Hatcher and Plaintiff N.H., pursuant to Fed. R. Civ. P. 17(c)(1)(A), by
and through their undersigned counsel, bring this Complaint for damages against Defendant
WALMART INC. (hereinafter, "Defendant") and in support, state the following:

7. Walmart is vicariously liable for the acts and/or omissions of its employees and/or agents, who were at all material times acting on behalf of Walmart and within the scope of its employment and agency.

VENUE AND JURISDICTION

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a), based on complete diversity of citizenship between Plaintiffs and Defendants. *See supra* ¶¶ 3–4.

9. The amount in controversy exceeds \$75,000.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

11. Defendants have and continue to conduct substantial business in the State of Nevada and in this District, distributes the APAP Products in this District, receives substantial compensation and profits from sales of the APAP Products in this District, and has made material omissions and misrepresentations and breaches of warranties in this District and caused injuries in this District to Plaintiffs, among others, so as to subject Defendants to in personam jurisdiction in this District. It was foreseeable at all times that Defendants could be haled into court in the State of Nevada for its conduct that caused injuries to citizens of Nevada, like Plaintiffs in this action. An exercise of in personam jurisdiction by this Court over Defendants comports fully with due process and does not offend traditional notions of fair play and substantial justice.

12. Defendants are registered to transact business in Nevada.

FACTS COMMON TO ALL COUNTS

A. APAP Is Marketed as the Safe Pain Reliever for Pregnant Women, but APAP Can Cause ASD/ADHD in Children

13. APAP is widely used by pregnant women to relieve pain during the term of their pregnancy.

1 14. APAP was initially discovered in the late 1800's.

2 15. APAP was introduced to the US market in 1955 as the first aspirin-free pain
3 reliever. APAP was originally marketed and sold as a product to reduce fever in children,
4 packaged like a red fire truck with the slogan, "for little hotheads."

5 16. APAP is sold in billions of units annually in North America alone.

6 17. APAP has long been marketed as the safest, and the *only* appropriate, over-the-
7 counter pain relief drug on the market for pregnant women.

8 18. More than 65% of pregnant women in the United States use APAP during
9 pregnancy.

10 19. Based upon information and belief, a majority of women who use APAP during
11 pregnancy do so electively for the treatment of headaches, muscle pain, back pain, and infection.

12 20. These pregnant women electively choose to take APAP because Defendants have
13 marketed APAP as a safe pain reliever for pregnant women.

14 21. However, increasing experimental and epidemiological research shows that
15 prenatal exposure to APAP alters fetal development, which significantly increases the risks of
16 neurodevelopmental disorders, including but not limited to, autism spectrum disorder ("ASD")
17 and attention-deficit/hyperactivity disorder ("ADHD").

18 22. Undisturbed development of the human brain in utero is vital to the health and
19 wellness of a child's development. The human brain is vulnerable and extremely sensitive in utero.
20 During this sensitive time-period in utero, certain chemicals have been found to cause permanent
21 brain injury at low exposure levels.

22 23. Once ingested by the mother, APAP is known to readily cross the placenta and
23 blood-brain barrier.

1 24. ASD is a serious neurological and developmental disorder that affects how people
2 interact with others, communicate, learn, and behave.

3 25. There are three functional levels of ASD, with Level 1 requiring support with
4 activities of daily living, Level 2 requiring substantial support with activities of daily living, and
5 Level 3 requiring very substantial support with activities of daily living.

6 26. Treatments for ASD include behavioral management therapy, cognitive behavior
7 therapy, joint attention therapies, medications, occupational therapy, physical therapy, social skill
8 training, and speech-language therapy. Treatment for ASD lasts a lifetime, as there is no cure.

9 27. ADHD is a chronic neurodevelopmental disorder resulting in attention difficulty,
10 hyperactivity, and impulsiveness.

11 28. ADHD begins in childhood and persists through adulthood. ADHD contributes to
12 low self-esteem, troubled relationships, and difficulty with school, work, and familial
13 relationships.

14 29. Treatments for ADHD, include, but are not limited to, chronic medication usage
15 and various therapies. Treatment for ADHD lasts a lifetime, as there is no cure.

16 30. In or around 2018, the Center for Disease Control and Prevention (“CDC”) found
17 that 1 in 44 (2.3%) 8-year-old children have been diagnosed with ASD.

18 31. This represents an increase from a prior CDC finding that 1 in 68 U.S. children
19 born in 2002 have ASD, which already represented a more than a 100% increase compared with
20 children born a decade prior.

21 32. As of 2019, 8.8% of children had been diagnosed with ADHD, or roughly 325,000
22 children per year.

23 33. Parental awareness and changes in diagnoses do not fully account for the rapid rise
24 in these diagnoses.

1 34. Rather, neurotoxic exposures, such as prenatal APAP exposure, partly explain a
2 trending increase in diagnoses.

3 35. For decades, beginning in 1987, the scientific community has published studies
4 showing that prenatal ingestion of APAP can cause ASD and ADHD.

5 36. A 2019 meta-analysis of studies from 1987 to 2016, with relative risks ranging from
6 1.16 to 1.34, found statistically significant nineteen percent (19%) increased risk of ASD in
7 children whose mothers took APAP during pregnancy.

8 37. Since 2013, there have been six European birth cohort studies, examining over
9 70,000 mother-child pairs, showing the association between prenatal use of APAP and ASD and
10 ADHD, confirming the results of studies dating back to 1987.

11 38. The overall body of scientific evidence has shown for decades that prenatal use of
12 APAP can cause ASD and ADHD in the child.

13 39. During all relevant times herein, Defendants were engaged in the business of
14 manufacturing and selling the APAP Products in the United States, and the weight of the scientific
15 evidence available showed prenatal exposure to APAP significantly increases the risk of
16 neurodevelopmental disorders in children exposed to APAP prenatally, including but not limited
17 to ASD and ADHD.

18 40. At the time Plaintiff Mother was pregnant with Plaintiff Child the scientific
19 evidence regarding the risks of in utero exposure of APAP was available to Defendants, and
20 Defendants knew or should have known that prenatal use of APAP can cause ASD or ADHD.

21 41. Moreover, despite scientific evidence that prenatal use of APAP can cause ASD or
22 ADHD, Defendants continued, and continues, to market APAP Products as safe pain relievers for
23 pregnant women, making mothers believe they are choosing a safe drug for even minor aches,
24 pains, and headaches.

1 **B. Plaintiff Mother Took APAP Products while Pregnant, and It Caused ASD**
2 **and ADHD in Plaintiff Child**

3 42. Plaintiff Mother began using the APAP Products in or around April 2013 when she
4 was pregnant with her Plaintiff Child.

5 43. During her pregnancy, Plaintiff Mother took the APAP Products for pain relief.

6 44. Plaintiff Mother believed it was safe for her to take the APAP Products during her
7 pregnancy.

8 45. Indeed, Plaintiff Mother was instructed to not take ibuprofen or aspirin while
9 pregnant but was informed she could take APAP freely and without risk.

10 46. There is no warning on the APAP Products' labels specifically addressing the risks
11 of ASD and ADHD if a mother ingests APAP while pregnant.

12 47. Had Plaintiff Mother known of the risk of taking APAP while pregnant, specifically
13 that it could cause ASD in her child, she would not have taken the APAP Products.

14 48. Plaintiff Child was born on February 13, 2013.

15 49. Plaintiff Mother started to have concerns about Plaintiff Child's development when
16 she observed delays.

17 50. Plaintiff Child was ultimately diagnosed with ASD and has specialized curriculum
18 at school due to his ASD.

19 51. Plaintiff Child's ASD puts an incredible strain on Plaintiff Mother and their family.

20 52. Plaintiff's Mother fears for Plaintiff Child and experiences substantial stress and
21 anxiety due to the challenges associated with Plaintiff Child's ASD.

22 **ESTOPPEL AND TOLLING OF STATUTE OF LIMITATIONS**

23 53. Due to Defendant's acts of fraudulent concealment, Defendants are estopped from
24 relying on any statutes of limitations or repose. Such acts include Defendants intentional

1 concealment from Plaintiff Mother and the general public that APAP is defective when there is
2 prenatal exposure, while continuing to market the APAP Products with the adverse effects
3 described in this Complaint.

4 54. Given Defendant's affirmative actions of concealment by failing to disclose
5 information about the defects known to it but not the public information over which Defendants
6 had exclusive control—and because Plaintiff Mother could not reasonably have known that the
7 APAP Products were defective, Defendants are estopped from relying on any statutes of
8 limitations that might otherwise be applicable to the claims asserted in this Complaint.

9 **CLAIMS FOR RELIEF**

10 **COUNT I: STRICT LIABILITY – FAILURE TO WARN**

11 55. Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in
12 the rest of this Complaint as if fully set forth herein.

13 56. At the time of Plaintiffs' injuries, the APAP Products were defective and
14 unreasonably dangerous to foreseeable consumers using the APAP Products in a foreseeable
15 manner during pregnancy, including Plaintiff Mother, because they lacked a suitable and adequate
16 warning.

17 57. At all relevant times, Defendants engaged in the business of testing, developing,
18 designing, manufacturing, marketing, labeling, selling, distributing, and promoting the APAP
19 Products, which were defective and unreasonably dangerous to consumers, including Plaintiff
20 Mother, because they did not contain adequate warnings or instructions concerning the dangerous
21 characteristics of ingesting APAP during pregnancy. These actions were under the ultimate
22 control and supervision of Defendants. At all relevant times, Defendants registered, researched,
23 manufactured, distributed, marketed, labeled, promoted, and sold the APAP Products within this
24

1 District and aimed the marketing at the ultimate consumer. Defendants were at all relevant times
2 involved in the retail and promotion of the APAP Products marketed and sold in this District.

3 58. Defendants had a duty to warn of the risks associated with the use of the APAP
4 products during pregnancy.

5 59. The APAP Products ingested by Plaintiff Mother during pregnancy were in the
6 same or substantially similar condition as they were when they left possession of the Defendants.

7 60. Defendants expected and intended the APAP Products to reach users such as
8 Plaintiff Mother in the condition in which the APAP Products were sold.

9 61. Plaintiff Mother did not materially alter the APAP Products prior to ingestion.

10 62. Plaintiff Mother ingested the APAP Products during pregnancy as indicated on the
11 APAP Products' labels.

12 63. Plaintiff Mother was unaware of the defects and dangers of the APAP Products
13 during pregnancy and was specifically unaware that prenatal exposure increases the risk of brain
14 and behavioral development of children in utero.

15 64. The labels on the APAP Products to consumers lack any warning specific to
16 pregnant women. The information that Defendants did provide or communicate to consumers
17 failed to contain relevant warnings, hazards, and precautions that would have enabled consumers
18 such as Plaintiff Mother to utilize the products safely and with adequate protection during
19 pregnancy, or to decide to not use or ingest the APAP Products at all.

20 65. This alleged failure to warn is not limited to the information contained on the APAP
21 Products' labeling. Defendants were able, in accord with federal law, to comply with relevant
22 state law by disclosing the known risks associated with exposure to or use of APAP during
23 pregnancy through other non-labeling mediums, including, but not limited to, promotion,
24

1 advertisements, public service announcements, and/or public information sources. But Defendants
2 did not disclose these known risks through any medium.

3 66. At all relevant times, Defendants had a duty to properly test, develop, design,
4 manufacture, inspect, package, label, market, promote, sell, distribute, maintain, and supply the
5 APAP Products; provide proper warnings for the APAP Products; and take such steps as necessary
6 to ensure the APAP Products did not cause users and consumers, and their children, to suffer from
7 unreasonable and dangerous risks. Defendants had a continuing duty to warn Plaintiff Mother of
8 dangers associated with exposure to or use of APAP during pregnancy. Defendants, as a
9 manufacturer, seller, and/or distributor of pharmaceutical medication, is held to the knowledge of
10 an expert in the field.

11 67. At the time of manufacture, Defendants could have provided the warnings or
12 instructions regarding the full and complete risks of the APAP Products during pregnancy because
13 Defendants knew or should have known of the unreasonable risks of ASD and ADHD associated
14 with prenatal exposure to and/or the use of such products.

15 68. At all relevant times, Defendants failed and deliberately refused to investigate,
16 study, test, or promote the safety of the APAP Products, or to minimize the dangers to consumers
17 of the APAP Products and to those who would foreseeably use or be harmed by the APAP
18 Products, including Plaintiffs.

19 69. Defendants failed to adequately warn consumers, like Plaintiff Mother, about the
20 significant increased risk of neurodevelopmental disorders in children exposed to APAP
21 prenatally, including but not limited to ASD and ADHD.

22 70. Defendants failed to adequately inform reasonably foreseeable consumers, like
23 Plaintiff Mother, of the proper usage of the APAP Products.
24

1 71. Even though Defendants knew or should have known that APAP posed a grave risk
2 of harm to Plaintiff Child, Defendants failed to exercise reasonable care to warn of the dangerous
3 risks associated with use and prenatal exposure.

4 72. Plaintiff Mother was exposed to the APAP Products during pregnancy without
5 knowledge of their dangerous characteristics.

6 73. At all relevant times, Plaintiff Mother used and/or was exposed to the use of the
7 APAP Products while using them for their intended or reasonably foreseeable purposes during
8 pregnancy, without knowledge of their dangerous characteristics.

9 74. Plaintiff Mother could not have reasonably discovered the defects and risks
10 associated with the APAP Products prior to or at the time of Plaintiff consuming APAP during
11 pregnancy. Plaintiff Mother relied upon the skill, superior knowledge, and judgment of Defendants
12 to know about and disclose serious health risks associated with using the APAP Products.

13 75. If Plaintiff Mother had been properly warned of the defects, dangers, and risks
14 associated with prenatal exposure to APAP, Plaintiff Mother would have utilized the APAP
15 Products safely and with adequate protection during pregnancy or would have decided to not ingest
16 the APAP Products at all. Defendant's failure to properly warn of those defects, dangers, and risks
17 associated with prenatal exposure to APAP was a substantial factor in causing Plaintiffs' injuries
18 and damages.

19 76. Defendants are liable to Plaintiffs for injuries caused by Defendants' negligent or
20 willful failure, as described above, to provide adequate warnings or other relevant information and
21 data regarding the appropriate use of the APAP Products and the risks associated with the use of
22 APAP.

23 77. As a direct and proximate result of Defendants placing defective APAP Products
24 into the stream of commerce, and Plaintiff Mother's foreseeable use and ingestion of the APAP

1 Products during pregnancy, Plaintiff Child was exposed to APAP prenatally, causing him to
2 develop ASD.

3 78. As a direct and proximate result of Defendants placing defective APAP Products
4 into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain and
5 suffering, emotional distress, lost wages and earning capacity, and diminished quality of life.
6 Plaintiffs respectfully seek all damages to which they may be legally entitled.

7 **COUNT II: NEGLIGENCE**

8 79. Plaintiffs restate, reallege, and incorporate by reference each of the allegations set
9 forth in the rest of this Complaint as if fully set forth herein.

10 80. Although Defendants had a duty to use reasonable care in testing, developing,
11 designing, manufacturing, marketing, labeling, selling, distributing, promoting, and preparing
12 written instructions and warnings for the APAP Products, Defendants failed to do so.

13 81. Defendants directly or indirectly, caused the APAP Products to be sold, distributed,
14 packaged, labeled, marketed, promoted, and/or used by Plaintiff Mother. At all relevant times,
15 Defendants registered, researched, manufactured, distributed, marketed, promoted, and sold the
16 APAP Products within this district and aimed at a consumer market within this district.

17 82. Defendants knew, or in the exercise of reasonable care should have known, that the
18 APAP Products were defectively and unreasonably designed and/or manufactured, and/or
19 marketed, and were unreasonably dangerous and likely to injure persons that were prenatally
20 exposed to them. Defendants knew or should have known that Plaintiff Mother was unaware of
21 the dangers and defects inherent in the APAP Products when she was ingesting them during her
22 pregnancy with Plaintiff Child.

23 83. At all relevant times, Defendants had a duty to exercise reasonable care in the
24 marketing, advertisement, promotion, and sale of the APAP Products. defendants' duty of care

1 owed to consumers and the general public included providing accurate, true, and correct
2 information concerning the risks of using APAP during pregnancy and appropriate, complete, and
3 accurate warnings concerning the potential adverse effects of APAP and, in particular, the
4 significantly increased risk of causing neurodevelopmental disorders in children through prenatal
5 exposure to APAP.

6 84. At all relevant times, Defendants knew or, in the exercise of reasonable care, should
7 have known of the hazards and dangers of APAP ingestion while pregnant and, specifically, the
8 significantly increased risk of causing neurodevelopmental disorders in children through prenatal
9 exposure to APAP.

10 85. Defendants failed to provide any kind of warning to pregnant consumers, like
11 Plaintiff Mother, about the significantly increased risk of causing neurodevelopmental disorders
12 in children through prenatal exposure to APAP.

13 86. Accordingly, at all relevant times, Defendants knew or, in the exercise of
14 reasonable care, should have known that use of the APAP Products during pregnancy could cause
15 Plaintiffs' injuries, and thus, create a dangerous and unreasonable risk of injury to the users of
16 these products, including Plaintiffs.

17 87. As such, Defendants breached its duty of reasonable care and failed to exercise
18 ordinary care in the design, research, development, manufacture, testing, marketing, labeling,
19 supply, promotion, advertisement, packaging, sale, and distribution of the APAP Products, in that
20 Defendants manufactured and produced defective APAP Products, which carry the significantly
21 increased risk of causing neurodevelopmental disorders in children through prenatal exposure to
22 APAP; knew or had reason to know of the defects inherent in the APAP Products; knew or had
23 reason to know that a user's or consumer's use of the APAP Products during pregnancy created a
24

1 significant risk of harm and unreasonably dangerous side effects; and failed to prevent or
2 adequately warn of these risks and injuries.

3 88. Defendants had a duty to disclose the truth about the risks associated with exposure
4 to or use of APAP during pregnancy in its promotional efforts outside of the context of labeling.
5 Defendants were negligent in its promotion of APAP outside of the labeling context by failing to
6 disclose material risk information as part of its promotion and marketing of the APAP Products,
7 including through the internet, television, and print advertisements.

8 89. Despite Defendants' ability and means to investigate, study, and test the APAP
9 Products and to provide adequate warnings regarding use during pregnancy, Defendants failed to
10 do so. Indeed, Defendants wrongfully concealed information and further made false and/or
11 misleading statements concerning the safety and use of APAP.

12 90. Defendants' negligence included:

13 a. Manufacturing, producing, promoting, formulating, creating, developing,
14 designing, selling, and/or distributing the APAP Products while negligently and/or intentionally
15 concealing and failing to disclose the results of trials, tests, and studies of APAP and the
16 significantly increased risk of causing neurodevelopmental disorders in children through prenatal
17 exposure to APAP, and, consequently, the risk of serious harm associated with human use of
18 APAP during pregnancy;

19 b. Failing to undertake sufficient studies and conduct necessary tests to
20 determine whether or not the APAP Products were safe for its intended consumer use and unborn
21 children;

22 c. Failing to provide adequate instructions, guidelines, and safety precautions
23 to those persons Defendants could reasonably foresee would use the APAP Products during
24 pregnancy;

1 d. Failing to disclose to Plaintiff Mother, users, consumers, and the general
2 public that use of APAP during pregnancy presents severe risks of neurodevelopmental disorders
3 in children exposed to APAP prenatally;

4 e. Failing to warn Plaintiff Mother, users, consumers, and the general public
5 that the APAP Products' risk of harm was unreasonable and that there were safer and effective
6 alternative medications or treatments available to Plaintiff Mother and other users and/or
7 consumers;

8 f. Representing that the APAP Products were safe for their intended purposes
9 for pregnant women when, in fact, Defendants knew or should have known the APAP Products
10 were not safe for their intended purposes;

11 g. Declining to make or propose any changes to the APAP Products' labeling
12 or other promotional materials that would alert users, consumers, and the general public of the
13 risks of APAP, including to pregnant women;

14 h. Advertising, marketing, and recommending the use of the APAP Products
15 during pregnancy, while concealing and failing to disclose or warn of the dangers known by
16 Defendants to be caused by the use of or exposure to APAP;

17 i. Continuing to disseminate information to its consumers and the general
18 public, which indicates or implies that the APAP Products are not unsafe for pregnant consumer
19 use; and

20 j. Continuing the manufacture and sale of the APAP Products with the
21 knowledge that the APAP Products were unreasonably unsafe and dangerous.

22 91. Defendants knew and/or should have known that it was foreseeable that children
23 such as Plaintiff Child would suffer injuries as a result of Defendant's failure to exercise ordinary
24

1 care in the manufacturing, marketing, labeling, distribution, and sale of the APAP Products to
2 pregnant consumers, like Plaintiff Mother.

3 92. Plaintiff Mother did not know the nature and extent of the injuries that could result
4 in her child from the intended use of and/or exposure to APAP prenatally.

5 93. Defendant's negligence was a proximate cause of Plaintiffs' injuries, i.e., absent
6 Defendant's negligence, Plaintiff Child would not have developed ASD. That negligence was a
7 substantial factor in causing Plaintiffs' injuries and damages.

8 94. Defendant's conduct, as described above, was reckless. Defendants regularly risked
9 exposing Plaintiff Mother to the APAP Products while pregnant with Plaintiff Child, with full
10 knowledge of the dangers of the APAP Products and that it could cause ASD in Plaintiff Child.
11 Defendants made conscious decisions not to redesign, re-label, warn, or inform the unsuspecting
12 public, including Plaintiff Mother. Defendant's reckless conduct therefore warrants an award of
13 punitive damages.

14 95. As a direct and proximate result of Defendants placing the defective APAP
15 Products into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain
16 and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life.
17 Plaintiffs respectfully seek all damages to which they may be legally entitled.

18 **COUNT III: BREACH OF EXPRESS WARRANTY**

19 96. Plaintiffs restate, reallege, and incorporate by reference each of the allegations set
20 forth in the rest of this Complaint as if fully set forth herein.

21 97. At all material times, Defendants manufactured, marketed, sold, distributed, and
22 otherwise placed into the stream of commerce the APAP Products. These actions were under the
23 ultimate control and supervision of Defendants.

1 98. In advertising, marketing, and promoting the APAP Products to consumers, like
2 Plaintiff Mother, Defendants expressly warranted that the APAP Products were safe for use and
3 reasonably fit for their intended purposes, including use by pregnant mothers. In advertising,
4 marketing, and otherwise promoting the APAP Products, Defendants intended for pregnant
5 consumers to rely upon its representations regarding safety and fitness, in an effort to induce them
6 to purchase and consume the APAP Products during pregnancy to relieve pain.

7 99. Defendants expressly warranted to Plaintiff Mother and pregnant consumers that
8 the APAP Products were safe for ingestion during pregnancy.

9 100. Defendants had a duty to exercise reasonable care in the research, development,
10 design, testing, packaging, manufacture, inspection, labeling, distributing, marketing, promotion,
11 sale, and release of the APAP Products, including a duty to:

12 a. ensure that the APAP Products during pregnancy did not cause users and
13 their unborn children unreasonably dangerous side effects;

14 b. warn of dangerous and potentially incurable side effects; and

15 c. disclose adverse material facts, such as the true risks associated with the use
16 of and exposure to APAP during pregnancy, when making representations to users, consumers,
17 and the general public, including Plaintiff Mother.

18 101. Defendants had the ability to properly disclose the risks associated with APAP
19 usage during pregnancy through multiple channels, not just labeling.

20 102. At all relevant times, Defendants expressly represented and warranted to the
21 purchasers of the APAP Products, by and through statements made by Defendants in labels,
22 publications, brochures, and other written materials intended for consumers and the general public,
23 that the APAP Products were safe to human health and the environment, effective, fit, and proper
24 for their intended use during pregnancy. Defendants advertised, labeled, marketed, and promoted

1 the APAP Products, representing the quality to consumers and the public in such a way as to induce
2 their purchases or use during pregnancy, thereby making an express warranty that the APAP
3 Products would conform to the representations.

4 103. The representations about the APAP Products, as set forth herein, contained or
5 constituted affirmations of fact or promises made by the seller to the buyer, which related to the
6 goods and became part of the basis of the bargain, creating an express warranty that the goods
7 would conform to the representations.

8 104. Defendants breached express representations and warranties made to Plaintiff
9 Mother, with respect to the APAP Products, including the following:

10 a. Defendants represented through its labeling, advertising, and marketing
11 materials that the APAP Products were safe for use during pregnancy, and intentionally withheld
12 and concealed information about the risks of serious injury associated with use of APAP and by
13 expressly limiting the risks associated with use during pregnancy within its warnings and labels;
14 and

15 b. Defendants represented that the APAP Products were safe for use and
16 intentionally concealed information that demonstrated that APAP carries the significantly
17 increased risk of causing neurodevelopmental disorders in children through prenatal exposure to
18 APAP, and that the APAP Products, therefore, were not safer than alternatives available on the
19 market.

20 105. Plaintiff Mother detrimentally relied on the express warranties and representations
21 of Defendants concerning the safety and/or risk profile of APAP during pregnancy in deciding to
22 purchase the APAP Products. Plaintiff Mother reasonably relied upon Defendants to disclose
23 known defects, risks, dangers, and side effects of APAP. Plaintiff Mother would not have
24 purchased or used the APAP Products during pregnancy had Defendants properly disclosed the

1 risks associated with the APAP Products, either through advertising, labeling, or any other form
2 of disclosure. Defendant's breach of the express warranties and representations concerning the
3 safety and/or risk profile of APAP during pregnancy was a proximate cause of Plaintiffs' injuries
4 and damages.

5 106. Plaintiff Mother had no knowledge of the falsity or incompleteness of Defendants'
6 statements and representations concerning the APAP Products.

7 107. Plaintiff Mother used and/or was exposed to APAP during pregnancy as researched,
8 developed, designed, tested, manufactured, inspected, labeled, distributed, packaged, marketed,
9 promoted, sold, or otherwise released into the stream of commerce by Defendants.

10 108. Had the warnings, labels, advertisements, or promotional material for the APAP
11 Products accurately and adequately set forth the true risks associated with the use of such Products
12 during pregnancy, including Plaintiffs' injuries, rather than expressly excluding such information
13 and warranting that the APAP Products were safe for their intended use, Plaintiffs could have
14 avoided the injuries complained of herein.

15 109. As a direct and proximate result of Defendant's breach of express warranty,
16 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost
17 wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages
18 to which they may be legally entitled.

19 **COUNT IV: BREACH OF IMPLIED WARRANTY**

20 110. Plaintiffs restate, reallege, and incorporate by reference each of the allegations set
21 forth in the rest of this Complaint as if fully set forth herein.

22 111. At all material times, Defendants manufactured, marketed, sold, distributed, and
23 otherwise placed the APAP Products into the stream of commerce.
24

1 112. At all material times, Defendants intended for the APAP Products to be consumed
2 and ingested by pregnant women, like Plaintiff Mother; and Defendants impliedly warranted that
3 the APAP Products and their component parts were of merchantable quality, safe, fit for such use,
4 and adequately tested.

5 113. Defendants were aware that consumers, including Plaintiff Mother, would consume
6 and ingest the APAP Products as directed by the Products' labels and promotional materials.
7 Therefore, Plaintiff Mother was a foreseeable user of the APAP Products.

8 114. But Defendants failed to disclose that APAP has dangerous propensities when used
9 as intended during pregnancy and that use of the APAP Products carries an increased risk of
10 developing severe injuries, including Plaintiff Child's injuries.

11 115. The APAP Products were expected to reach, and did in fact reach consumers,
12 including Plaintiff Mother, without substantial change in the condition in which they were
13 manufactured and sold by Defendants.

14 116. Plaintiff Mother was an intended beneficiary of the implied warranties made by
15 Defendants to purchasers of the APAP Products, including Plaintiff Mother.

16 117. In reliance upon Defendants' implied warranties, Plaintiff Mother purchased and
17 used the APAP Products as indicated, and in the foreseeable manner normally intended,
18 recommended, promoted, and marketed by Defendants. The failure of the APAP Products to be
19 of merchantable quality and to be safe or fit for their intended use was a proximate cause of
20 Plaintiffs' injuries and damages.

21 118. Defendants breached its implied warranties to Plaintiffs in that the APAP Products
22 were not of merchantable quality, nor were they safe or fit for their intended use.

1 119. The harm caused by the APAP Products far outweighed their benefit, rendering the
2 APAP Products more dangerous than an ordinary consumer or user would expect and more
3 dangerous than alternative products.

4 120. As a direct and proximate result of Defendant's breach of implied warranties of
5 merchantability and fitness for a particular purpose, Plaintiffs have suffered permanent injuries,
6 significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished
7 quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

8 **COUNT V: VIOLATION OF CONSUMER PROTECTION LAWS**

9 121. Plaintiffs restate, reallege, and incorporate by reference each of the allegations set
10 forth in the rest of this Complaint as if fully set forth herein.

11 122. Plaintiff Mother purchased and used the APAP Products for primarily personal use
12 and pain relief during pregnancy, thereby suffering ascertainable losses as a result of Defendant's
13 actions in violation of the consumer protection laws.

14 123. Had Defendants not engaged in the deceptive conduct described in this Complaint,
15 Plaintiff would not have purchased and/or paid for the APAP Products, and Plaintiffs would not
16 have incurred related injury medical costs.

17 124. Defendants engaged in wrongful conduct and unlawful while at the same time
18 obtaining under false pretenses moneys from Plaintiff for the APAP Products. Those moneys
19 would not have been paid had Defendants not engaged in unfair and deceptive conduct. Plaintiffs
20 actually relied upon Defendant's misrepresentations and deception concerning the APAP
21 Products.

22 125. Defendants engaged in the following unfair methods of competition or deceptive
23 acts or practices, which are proscribed by law:
24

1 a. knowingly making false representations as to the characteristics,
2 ingredients, uses, benefits, or qualities of goods for sale;

3 b. advertising goods or services with the intent not to sell them as advertised;

4 c. engaging in fraudulent or deceptive conduct creating a likelihood of
5 confusion or misunderstanding.

6 126. Plaintiffs were injured by the cumulative nature of Defendant's conduct. The
7 cumulative effect, directed at patients, physicians, and consumers, was to create demand for and
8 sell the APAP Products. Each aspect of Defendant's conduct combined to artificially create sales
9 of the APAP Products, including to Plaintiff Mother who did, in fact, purchase the APAP Products.

10 127. Defendants had a statutory duty to refrain from unfair or deceptive acts or trade
11 practices in the design, labeling, development, manufacture, promotion, and sale of the APAP
12 Products.

13 128. Defendant's deceptive, unconscionable, or fraudulent representations and material
14 omissions to consumers, including Plaintiff Mother, constitute unfair and deceptive acts and trade
15 practices in violation of the federal and state consumer protection statutes listed below.

16 129. Defendant's actions, as complained of in this Complaint, constitute unfair
17 competition or unfair, unconscionable, deceptive, or fraudulent acts or trade practices in violation
18 of the federal and state consumer protection statutes listed below.

19 130. Defendants has engaged in unfair competition, or unfair or deceptive acts or trade
20 practices, or has made false representations under the following statutes:

21 • 15 U.S.C. §§ 2301–12 (1982);

22 • N.R.S. § 598.0901 et seq.;

23 131. To protect consumers against unfair, deceptive, fraudulent, and unconscionable
24 trade and business practices, and false advertising, Defendants, as the supplier, manufacturer,

1 advertiser, and seller, is subject to liability under the above legislation enacted against unfair,
2 deceptive, fraudulent, and unconscionable consumer sales practices.

3 132. By knowingly and falsely representing that the APAP Products were fit to be used
4 for the purposes for which they were intended—when in fact they were defective and dangerous
5 when used during pregnancy—and by other acts alleged, Defendants violated the above statutes,
6 enacted to protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and
7 business practices, and false advertising.

8 133. Defendant’s actions and omissions are uncured or incurable, deceptive acts under
9 the above legislation.

10 134. Defendants had actual knowledge of the defective and dangerous conditions of the
11 APAP products but failed to take any action to cure such defective and dangerous conditions.

12 135. Plaintiff Mother relied upon Defendant’s misrepresentations and omissions in
13 determining which APAP Products (if any) to ingest.

14 136. Defendant’s deceptive, unconscionable, or fraudulent representations and material
15 omissions to consumers constituted unfair and deceptive acts and practices.

16 137. By reason of the unlawful acts in which Defendants engaged, and as a direct and
17 proximate result thereof, Plaintiffs have suffered ascertainable losses and damages.

18 138. As a direct and proximate result of Defendant’s violations of the above-listed
19 legislation, Plaintiffs have sustained economic losses and other damages and are entitled to
20 statutory and compensatory damages in an amount to be proven at trial and civil penalties as
21 permitted by law.

22 **COUNT VI: NEGLIGENT MISREPRESENTATION**

23 139. Plaintiffs restate, reallege, and incorporate by reference each of the allegations set
24 forth in the rest of this Complaint as if fully set forth herein.

1 140. Defendants had a duty to accurately and truthfully represent to consumers,
2 including to Plaintiff Mother and to the public, that the APAP Products had not been adequately
3 tested and found to be a safe and effective treatment for pregnant women. Defendants breached
4 that duty as its representations of the safety of the APAP Products were false. Defendants intended
5 for consumers like Plaintiff Mother to rely upon that representation, Plaintiff Mother did justifiably
6 rely on Defendant's misrepresentations concerning the APAP Products' high risk of unreasonable
7 and dangerous adverse side effects when ingested or used during pregnancy.

8 141. Defendants failed to exercise ordinary care in the representations concerning the
9 APAP Products while Defendants were involved in its manufacture, sale, testing, quality
10 assurance, quality control, and distribution in interstate commerce, because Defendants
11 negligently misrepresented the APAP Products' high risk of unreasonable and dangerous adverse
12 side effects when ingested or used during pregnancy.

13 142. Defendants also breached its duty in representing to Plaintiff Mother that the APAP
14 Products had no serious side effects when ingested during pregnancy. Defendants intended for
15 consumers like Plaintiff Mother to rely upon that representation, and Plaintiff Mother did
16 justifiably rely upon that representation.

17 143. Defendants knew or had reason to know that the APAP Products had been
18 insufficiently tested or had not been tested at all; and that they lacked adequate and accurate
19 warnings, and created a high risk, or a higher than acceptable reported and represented risk, of
20 adverse side effects. Those side effects include neurodevelopmental disorders in children, such as
21 ASD. Thus, Defendants lacked reasonable ground for believing the representations to be true and
22 intended for consumers like Plaintiff to rely upon those misrepresentations by purchasing the
23 APAP products for use during pregnancy. Plaintiff Mother justifiably relied upon those
24 misrepresentations in purchasing and using the APAP products while pregnant. Defendant's

1 negligent misrepresentations concerning the safety and/or risk profile of using APAP during
2 pregnancy was a substantial factor in causing Plaintiffs' injuries and damages.

3 144. As a direct and proximate result of Defendant's negligent misrepresentation,
4 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost
5 wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages
6 to which they may be legally entitled.

7 **PUNITIVE DAMAGES**

8 145. Plaintiffs restate, reallege, and incorporate by reference each of the allegations set
9 forth in the rest of this Complaint as if fully set forth herein.

10 146. Defendants have acted with malice, express or implied, through conduct that is
11 intended to injure a person or despicable conduct that was engaged in with a conscious disregard
12 for the rights or safety of others, including Plaintiffs, and has acted with oppression in subjecting
13 Plaintiffs to despicable conduct that subjected them to cruel and unjust hardship with conscious
14 disregard for their rights. Further, Defendants have fraudulently and intentionally misrepresented
15 or concealed material facts known to it with the intention of depriving Plaintiffs of their rights or
16 to otherwise injure them.

17 147. Defendants failed to adequately test and study the APAP Products to determine and
18 ensure that the APAP Products were safe and effective for use during pregnancy before releasing
19 them for sale for human consumption.

20 148. Further, Defendants continued to manufacture and sell the APAP Products and
21 marketed them for use during pregnancy, even after obtaining knowledge and information that the
22 APAP Products were defective and unreasonably unsafe because they, among other things, did not
23 include adequate warnings.
24

1 149. Defendants were aware of the probable consequences of the dangerous and
2 defective product, including the risk of neurodevelopmental disorders in children, such as ASD
3 and ADHD, when they suffered prenatal exposure.

4 150. At all material times, Defendants knew or should have known that the APAP
5 Products were inherently dangerous with respect to the following: the risk of neurodevelopmental
6 disorders in children, such as ASD and ADHD, when they suffered prenatal exposure; pain and
7 suffering; loss of life's enjoyment; and unsuccessful treatments to cure the conditions proximately
8 related to the use of the APAP Products, as well as the other permanent and lasting severe personal
9 injuries.

10 151. Defendants knowingly withheld material information from consumers and the
11 public, including Plaintiff Mother, concerning the safety and efficacy of the APAP Products during
12 pregnancy, which deprived Plaintiff Mother of vitally necessary information with which to make
13 a fully informed decision about whether to use the APAP Products while pregnant.

14 152. At all material times, Defendants also knew and recklessly and/or intentionally
15 disregarded the fact that the APAP Products, when used during pregnancy, can cause debilitating
16 and life-altering side effects with greater frequency than safer alternative methods, products,
17 and/or treatments. But Defendants recklessly failed to advise the medical community and the
18 general public, including Plaintiff Mother, of that fact.

19 153. At all material times, Defendants intentionally misstated and misrepresented data;
20 and Defendants continue to misrepresent data so as to minimize the perceived risk of injuries and
21 the rate of complications caused by or associated with the APAP Products.

22 154. Notwithstanding the foregoing and the growing body of knowledge and
23 information regarding the true and defective nature of the APAP Products, with their increased
24 risk of side effects and serious complications, Defendants continue to aggressively market the

1 APAP Products to consumers, including the pregnant community at large, without disclosing the
2 true risk of the complications and side effects.

3 155. When Plaintiff Mother consumed the APAP Products and since then, Defendants
4 has known the APAP Products were defective and unreasonably dangerous without an adequate
5 warning. But Defendants continued to manufacture, produce, assemble, market, distribute, and
6 sell the APAP Products to the pregnant community so as to maximize sales and profits at the
7 expense of the health and safety of expecting mothers in a conscious, reckless, and/or intentional
8 disregard of the likely and foreseeable harm caused by the APAP Products to members of the
9 public, including Plaintiffs.

10 156. At all material times, Defendants have concealed and/or failed to disclose to the
11 public the serious risks and the potential complications associated with the APAP Products, so as
12 to ensure continued and increased sales and profits and to the detriment of the public, including
13 Plaintiffs.

14 157. Defendant's acts and omissions are of such character and nature so as to entitle
15 Plaintiffs to an award of punitive damages in accordance with applicable statutory and common
16 law. Defendant's conduct shows malice, oppression, or fraud, or that entire want of care, raising
17 the presumption of conscious indifference to consequences of that conduct, thereby justifying an
18 award of punitive damages.

19 WHEREFORE, Plaintiffs demand judgment against Defendants individually, and jointly
20 and severally. Plaintiffs also request compensatory damages, punitive damages, or enhanced
21 compensatory damages, together with interest, costs of suit, attorneys' fees, and such further relief
22 as the Court deems equitable and just.

PRAYER FOR RELIEF

Plaintiffs demand judgment against Defendants, individually, and jointly and severally, and prays for the following relief in accordance with applicable law and equity:

1. Compensatory damages to Plaintiffs for past, present, and future damages, including pain and suffering for severe and permanent personal injuries sustained by Plaintiffs, permanent impairment, mental pain and suffering, loss of enjoyment of life, health and medical care costs, economic damages, together with interest and costs as provided by law;

2. Restitution and disgorgement of Defendant's profits;

3. Applicable statutory penalties;

4. Punitive or enhanced damages;

5. Reasonable attorneys' fees as provided by law;

6. Past and future costs of all proceedings;

7. All ascertainable economic damages;

8. Prejudgment interest on all damages as allowed by law; and

9. Such other and further relief as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on all issues so triable.

Dated this 29th day of July, 2022.

WETHERALL GROUP, LTD.

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